

**IN THE HIGH COURT OF JUDICATURE FOR
RAJASTHAN AT JODHPUR**

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ORDER

- 1. Mahendra Kumar Kumawat Vs. State of Rajasthan & Anr.
(S.B. CIVIL WRIT PETITION NO.136/2003 UNDER)**
- 2. Onkar Singh Kumawat Vs. State of Rajasthan & Anr.
(S.B. CIVIL WRIT PETITION NO.137/2003 UNDER)**

**WRIT PETITIONS UNDER ARTICLE 226
OF THE CONSTITUTION OF INDIA.**

DATE OF ORDER :: 15th December, 2006

PRESENT

HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Mr.Harish Purohit, Advocate for the petitioners.
Mr.Rameshwar Dave, Dy. Govt. Advocate.

BY THE COURT

The aforesaid writ petitions raise common question of law though founded on different facts and therefore they were heard together and are being decided by this common order.

The petitioner Mahendra Kumar was appointed by order dated 09th August, 1976 as Junior Mechanic consequent upon his selection under the Rajasthan Mines and Geological Sub-ordinate Service Rules, 1960. The Government of Rajasthan came out with the circular dated 25th January, 1992 whereby it decided to grant selection scale to its employees in the Sub-ordinate and Ministerial service who could not be promoted in a span of 9, 18 and 27 years respectively.

First selection scale was granted to the petitioner w.e.f. 25th January, 1992 itself because he had already completed 9 years of service and he was fixed by order dated 01st July, 1992 in the pay scale of Rs.1400-2600. Second selection scale was granted to him on completion of 18 years service w.e.f. 13th August, 1994. The respondents however subsequently by their order dated 16th January, 1996 corrected/revised the pay scale granted to him on completion of 9 years from Rs.1400-2600 to Rs.1600-2900. The Government thereafter by order dated 23rd November, 1991 decided to amalgamate the cadre of the Junior Mechanic and Senior Mechanic by creating new

cadre in the name of Mechanic Gr.I and therefore the post of Junior Mechanic which the petitioner had been holding so far came to be re-designated as Mechanic Gr.I.

A notice was served by the respondents on 21st October, 2002 on the petitioner requiring him to show cause as to why the selection scale granted to him on completion of 9, 18 and 27 years be not withdrawn. The petitioner submitted his reply to the said notice on 25th January, 2002. In the reply, he explained that he was appointed as Junior Mechanic and thereafter this post was re-designated as Mechanic Gr.I pursuant to the decision of the Government dated 23rd November, 1991. He had therefore not been promoted even once and was rightly granted selection scale on completion of 9 and 18 years respectively. The respondents however passed an order dated 04th January, 2003 cancelling thereby the order dated 16th January, 1996. It is this order which has been challenged by the petitioner Mahendra Kumar.

Another petitioner Onkar Singh Kumawat in writ petition

No.137/2003 was appointed as Junior Mechanic by order dated 30th March, 1970 in the pay scale of Rs.120-240 for a period of six months or till availability of surplus employees whichever is earlier. His appointment was subsequently confirmed by the competent authority. He thus became a substantive appointee on the post of Junior Mechanic. He was promoted on the post of Senior Mechanic on 29th December, 1975. Subsequently, however he was confirmed on the said post w.e.f. 16th March, 1979. By virtue of the decision of the Government dated 23rd November, 1991 the post of Senior Mechanic held by him also came to be re-designated as Mechanic Gr.I. When the cadre of Junior Mechanic and Senior Mechanic were amalgamated, all were re-designated as Mechanic Gr.I. The respondents issued a common seniority list by order dated 25th March, 1996. According to the petitioner, in view of the amalgamation of the two cadres, Junior Mechanics were brought at par with Senior Mechanics and therefore the promotion granted to the petitioner became meaningless. The respondents by order dated 26th March, 1997 promoted the petitioner as Mechanical Foreman against the vacancies of the year 1996-97 in the scale

of 1640-2900 therefore as per the case of the petitioner this was first promotion on the post of Mechanic Gr.I to that of Mechanical Foreman. When the Government introduced the scheme of selection scale vide notification dated 25th January, 1992, the respondents by their order dated 16th January, 1995 allowed two selection scales respectively on completion of 9 and 18 of service to the petitioner commencing from 29th December, 1975 the date on which the petitioner was promoted as Senior Mechanic on the basis thereof. It was thereafter that he was granted third selection scale on completion of 27 years of service w.e.f. 31st October, 1997. However he was served with a show cause notice dated 27th September, 1992 asking him to show cause as to why the selection scale granted to him on completion of 18 years of service be not withdrawn. The petitioner submitted a detailed reply thereto on 09th October ,2002. The respondents however passed an order dated 04th January, 2003 thereby cancelling the order granting selection grade to the petitioner. It is this order which has been challenged by Onkar Singh Kumawat in his writ petition.

The respondents have contested both the writ petitions and filed their reply. In reply to the writ petition filed by Mahendra Kumar their contention is that when the first selection scale was granted to the petitioner w.e.f. 25th January, 1992, he was working on the post of Junior Mechanic. His first selection scale was revised because the petitioner submitted representation to the Government to claim parity with one Raghunath Sharma a similarly situated fellow employee. He was allowed pay scale of Rs.1600-2900 and therefore the petitioner's first selection scale was revised from Rs.1400-2600 to Rs.1600-2900. Subsequently when the case said Shri Raghunath Sharma was re-examined, it was found that he had wrongly been granted the pay scale of Rs.1600-2900 contrary to the rules and therefore the Government authority revised his selection scale. Shri Raghunath Sharma challenged the said order before the Rajasthan Civil Service Appellate Tribunal. The tribunal however dismissed his appeal.

According to the respondents, the petitioner concealed all these facts in his writ petition whereas they were fully known

to him. They have submitted that the order dated 23rd November, 1991 is only an order amalgamating cadres of Junior Mechanic and Senior Mechanic to that of Mechanic Gr.I. It has got no co-relation with the grant of selection grade. The order of amalgamation dated 23rd November, 1991 does not grant any new pay scale. At the time when this order was issued, Junior Mechanics were receiving their salary in the pay scale of Rs.895-1720 whereas Senior Mechanics in the pay scale of Rs.925-1800. The petitioner was granted first selection scale in the pay scale of Rs.1400-2600. He was granted next selection scale by order dated 16th January, 1996 when he completed 18 years. Before cancellation of order dated 16th January, 1996 the petitioner was dully informed and it was thereafter only that the order dated 13th September, 2002 was passed. The petitioner was granted selection scale on completion of 9 and 18 years of service vide order dated 16th January, 1996. This order was later cancelled on 04th January, 2003. Thereafter the matter was revised vide order dated 06th January, 2003 on completion of 18 years of service on the post of Mechanical Fireman in the pay scale of Rs.1600-2900. It was

because the first appointment of the petitioner was made on the post of Junior Mechanic but the next promotion was on the post of Senior Mechanic and further promotion would be to the post of Mechanical Foreman. The petitioner has been granted selection scale to the Junior Mechanic as well as the Mechanical Fireman therefore the respondents have rightly corrected the mistake by passing the order dated 04th January, 2003.

As regards petitioner Onkar Singh Kumawat, respondents apart from raising preliminary objections about maintainability of writ petition on the ground of alternative remedy being available before the tribunal submit that he was granted two selection scale up to the year 1997. The first promotion of petitioner was granted on the post of Senior Mechanic on 29th December, 1975 on which post he was confirmed on 16th January, 1978. Thereafter he was granted second promotion on the post of Mechanical Fireman vide order dated 28th March, 1997. The petitioner accepted this promotion without any protest. Since the petitioner had already received two promotions, he was not entitled to receive two selection scales

thereafter on completion of 9 and 18 years of service. It is submitted that the order of Government dated 23rd November, 1991 amalgamating the post of Junior Mechanic and Senior Mechanic into one post, has got no co-relation with the scheme of grant of selection grade. The petitioner was promoted on the post of Mechanical Fireman as he was holding the post of Junior Mechanic. The petitioner was granted selection scale on completion of 18 years on 10th June, 1993 in the pay scale of Rs.1600-2900 and amended order to that effect was issued on 16th January, 1995 which was set aside by order dated 04th January, 2003. According to them the order dated 16th January, 1995 whereby selection scale was granted to the petitioner on completion of 18 years service was against the rules and therefore the same was rightly withdrawn after serving show cause notice.

On consideration of the aforesaid facts, I find that the respondents in passing the impugned orders have merely sought to rectify the mistake which they made while granting two selection scale to both the petitioners on completion of 9

and 18 years of service. While in the case of Mahendra Kumar they found that initially when his first selection grade was granted in the pay scale of Rs.1400-2600, that was a correct scale but that was revised then on the ground of parity with Raghunath Sharma. But subsequently on examination, it transpired that Raghunath Sharma himself was wrongly granted such selection grade and therefore the same was withdrawn from him. When he approached to the tribunal against the said order, his appeal was dismissed. Now it was the very basis of the respondents refusing to first selection grade of the petitioner from Rs.1400-1600 to 1640-2900 and if the basis ceased to exist, the respondents in my considered view did not commit any illegality in revising it again to correct pay scale.

In the case of Onkar Singh Kumawat also it would be evident that he was initially appointed as Junior Mechanic as far back as 30th March, 1970 and was granted first promotion on the post of Senior Mechanic way back on 29th November, 1975. It was about 16 years thereafter that the post of Senior

Mechanic along with post of Junior Mechanic came to be re-designated as Mechanical Gr.I but having held the promotion for 15 years it cannot be accepted that the factum of promotion got obliterated completely just because the two posts were amalgamated into the cadre of Mechanical Gr.I and that is so because when the petitioner had been receiving higher amount of salary and earning increment in the higher pay scale and therefore he would continue to draw such higher salary than those who were in the cadre of Junior Mechanic notwithstanding the factum of amalgamation. It was thereafter that he was promoted to the post of Mechanical Fireman by order dated 23rd June, 1997. It was thereafter that the respondents by order dated 16th January, 1995 granted two selection grades to the petitioner upon completion of 9 years and 18 years of service taking as if he had not been promoted even once. The respondents thereafter again promoted the petitioner on the post of Mechanical Fireman by order dated 26th October, 1997. He was then granted third selection grade on completion of 27 years of service w.e.f 31st March, 1997. Result of this was that he received two promotions i.e. first

promotion on Senior Mechanic on 29th December, 1995 and the second promotion on the post of Mechanical Fireman on 26th March, 1997 whereas at the same time he received the benefit of all the three selection grades on completion of 9 and 18 years of service by orders dated 16th January, 1995 and 27 years of service having received two promotions within span of 23 years of service, the petitioner was entitled to receive only one selection scale and therefore the respondents by serving upon him a show cause notice withdraw the later two selection grades wrongly granted to him. In my considered view, they did not make any mistake in rectifying mistake by withdrawing the wrongly granted selection scales.

Coming now to the question whether the respondents having made a mistake on their own without any misrepresentation or fraud played upon them by the petitioners can be permitted to recover the amount paid to the petitioner by virtue of such orders wrongly passed by them.

It is trite law that when certain amount is paid to a

government servant on account of some wrong pay fixation or wrong interpretation of any rule relating to pay and revision etc., which is not attributable to any fraud committed or misrepresentation made by the government servant, the Government may although rectify the mistake but the amount so paid in excess cannot be allowed to be recovered.

In the result, the writ petitions are partly allowed. While the order rectifying the mistakes in both the cases are upheld, the action of the respondents in seeking to recover the amount paid in excess to the petitioners is held to be illegal and if recovered already, ordered to be refunded and in case no such recovery has been made the respondents are restrained from making any such recovery. There shall be no order as to costs.

[MOHAMMAD RAFIQ],J.

AKC.